IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 498 (SS) of 2007

HC 36 CP Rajvir Singh, S/o Sri Natthu Singh, R/o Village-Kunda Khurd Thana Noorpur, District – Bijnor U.P. at present posted as Office of the DIG Police Garhwal Range, Dehradun and eighty-six others.

…….Petitioner

Versus

1. State of Uttarakhand through its Principal Secretary (Home), Dehradun, District – Dehradun.
2. Additional Director General of Police (Administration) Uttarakhand Dehradun, District- Dehradun.
3. State of U.P. through its Secretary Home (Police), Lucknow.
4. Director General of Police U.P., Lucknow.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rakesh Thapliyal, learned counsel for the petitioners, Sri Paresh Tripathi, learned Brief Holder of State of Uttarakhand on behalf of respondents no. 1 and 2 and Smt. Beena Pandey, learned Standing Counsel for the State of Uttar Pradesh on behalf of respondents no. 3 and 4.

Learned counsel for both the parties are agree to decide the writ petition at its administration stage itself.

By means of this writ petition, the petitioners have prayed for the following reliefs:

a. *Issue a writ order or direction in the nature of Certiorari quashing the impugned order dated 05.05.2007 (annexure no. 1) passed by the Additional Director General of Police (Administration), Uttarakhand, Dehradun.*

b. *Issue a writ, order or direction in the nature of Mandamus directing the respondents that they may take a combined decision in the presence of the authorities of both the States i.e. State of Uttarakhand and State of U.P. for implementing the order of final allocation and while taking such a combined decision the other aspect such as the operation of the stay orders granted by the Hon'ble High Court of Judicature at Allahabad and the hardships of the concerned employee may also be taken into consideration and such a decision may be taken within a stipulated period before relieving the petitioner to the State of U.P.*

c. *issue any suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

d. Award cost of the writ petition to the petitioners.

By impugned order dated 05.05.2007 passed by Additional Director General of Police (Administration), Uttarakhand a general direction was issued to relieve all the police personnel including the petitioners, who are 87 in number and are working as Constables and Head Constables to State of U.P. in view of the fact that they have been finally allocated for State of U.P. by Union of India.

Learned counsel for the petitioners has challenged the impugned order on various grounds. That the petitioners have been finally allocated to State of U.P. in the year 2004 and since State of Uttarakhand has retained them till date, now there is no justification for relieving the petitioners for State of U.P. after three years. I do not find any force in the argument. It is true that petitioner had opted for State of U.P. and they have finally allocated to State of U.P. in the year 2004. Since

petitioners were not relieved for State of U.P. in the year 2004, it does not mean that State of Uttarakhand has no right to relieve the petitioner now. Further, when the petitioners were finally allocated to State of U.P. in the year 2004 and were not relieved by the State of Uttarakhand, they were free to raise objection or could+ have approached the court for their relieving. Thus, the argument of the petitioners is vague and cannot be accepted.

Secondly, learned counsel for the petitioner has submitted that impugned order has been passed without application of mind as if was not considered by the respondents that persons who are working in the State of U.P. and finally allocated to State of Uttarakhand have got stay order by Allahabad High Court in their favour and till they are relieved by the State of U.P., petitioners should not have been relieved for State of U.P. This argument does not have force. It is not correct that respondents have not applied his mind while passing, the order, the respondents have specifically stated that petitioners have already been allocated to State of U.P. So far as question of those Constables and Head Constables, who are working in the State of U.P. and have been finally allocated to State of Uttarakhand and have not been relieved for State of Uttarakhand in view of stay order passed by Allahabad High Court, it is the problem of State of Uttarakhand and not the problem of the petitioners. In case, State of Uttarakhand is in dearth of police personnel, it is for the State of Government to make alternative arrangement either by recruiting police personnel or by taking personnel on deputation and for that State Government will take necessary action.

Third ground on which the petitioner have challenged the impugned order is that State of Uttarakhand has not passed

order of relieving of those persons for State of U.P., who had opted for State of U.P. and were finally allocated for State of U.P., however, applied for mutual transfer. This ground also does not have any force. Union of India after issuing Final Allocation List received number of representations from various persons of different departments for changed of their allocation, consequently, Union of India issued a Circular to the State of U.P. and State of Uttarakhand that since Final Allocation List has already been issued it is not possible for Union of India now to reconsider the cases and if both the State Governments are agree for mutual transfer of such employees, both the State Governments may make guidelines for that purpose and or may frame rules for that purpose.

It is not the case of petitioners that after publication of final allocation list they had applied before Union of India for re-allocation. In fact, petitioners have neither objected against the Tentative Final Allocation List nor against Final Allocation List. They have also not made any request for mutual transfer. Petitioners have no right to say that they are being discriminated.

Learned counsel for the petitioners have submitted that petitioners may be permitted to make representation before State Government for mutual transfer against those persons, who working in State of U.P. and have been finally allocated to State of Uttarakhand and are not willing to join State of Uttarakhand.

No order is required to be passed for that the petitioners may make representation before the State of Government for their

mutual transfer and it is for the State Government to take decision, in case, the Government desires the services of the petitioners.

With this direction, writ petition as well as stay application no. nil of 2007 is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

May 11, 2007
SKSHARMA